

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JEANMARIE GUENOT,

No. C 13-1875 SI

Plaintiff,

**ORDER DENYING PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

v.

SKS OCULAR LLC, *et al.*,

Defendants.

Plaintiff's motion for partial summary judgment is scheduled for a hearing on March 14, 2014. Pursuant to Civil Local Rule 7-1(b), the Court determines that the motion is appropriate for resolution without oral argument and VACATES the hearing. The case management conference scheduled for March 14, 2014 at 3:00 p.m. remains on calendar.

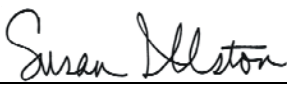
Plaintiff seeks partial summary judgment on her claims for breach of contract for her unpaid monthly salary from September 2010 to December 2012 and unpaid 2011 bonus. Plaintiff also seeks partial summary judgment on the following issues: (1) plaintiff's status as an "employee" under California and federal law; (2) the individual defendants' status as her "employer" under the FLSA; (3) that plaintiff was a non-exempt employee under California and federal law; and (4) that plaintiff is entitled to waiting time penalties and reimbursement of business expenses under the California Labor Code. Plaintiff's FLSA and California Labor Code claims are dependent upon plaintiff being found an "employee" and not an independent contractor.

1 Defendants contend that partial summary judgment is inappropriate because there are numerous
2 factual disputes regarding the terms of the oral contract between plaintiff and defendants and the nature
3 of her employment arrangement with defendants. Defendants have submitted evidence showing, *inter*
4 *alia*, that plaintiff agreed that payments for the services she provided would be accrued on the
5 company's books but not paid out until the company's financial condition improved (which it never
6 did), and that plaintiff, as the company's business advisor, was aware of the company's financial
7 condition. Defendants also deny plaintiff's allegation that the parties agreed that plaintiff's monthly
8 salary (or consulting fee) was retroactive to September 2010. Defendants have also submitted evidence
9 showing that plaintiff advised defendants that all four of the founders, including plaintiff, should be
10 classified as independent contractors of the company, and plaintiff was never considered an "employee"
11 of the company.

12 The Court concludes that plaintiff has not met her burden to show that summary judgment is
13 warranted. Whether plaintiff was an employee or an independent contractor (and relatedly, whether the
14 individual defendants were her "employer") are fact-intensive inquiries that cannot be resolved on
15 summary judgment. There are numerous factual disputes regarding what the parties agreed as to
16 plaintiff's compensation and when she would be paid, as well as whether plaintiff was an employee or
17 an independent contractor. Accordingly, the Court DENIES plaintiff's motion for partial summary
18 judgment. Docket No. 45. The Court also GRANTS defendants' motion to file a sur-reply. Docket No.
19 74.

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21 **IT IS SO ORDERED.**

22 Dated: March 7, 2014

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25 SUSAN ILLSTON
26 UNITED STATES DISTRICT JUDGE
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